

TOWN OF ERIE
ORDINANCE NO. 34-2019

**AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF ERIE
AMENDING SECTIONS 8-4-1, 8-4-2, 8-4-3, 8-4-5, 8-4-8, 8-4-11, 8-4-12, 8-4-13, 8-4-14, 8-4-
15 AND 8-4-16 OF THE ERIE MUNICIPAL CODE REGARDING STORMWATER
REGULATIONS**

WHEREAS, the Board of Trustees wishes to amend the Erie Municipal Code to update and clarify the Town's stormwater regulations.

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO, THAT:

Section 1. The title of Chapter 4 of Title 8 of the Erie Municipal Code is amended to STORMWATER REGULATIONS.

Section 2. Subsections A and F of Section 8-4-1 of the Erie Municipal Code are hereby amended as follows:

8-4-1: PURPOSE AND INTENT:

The purpose of this Chapter is to regulate non-stormwater discharges to the municipal separate storm sewer system ("MS4"), as required by federal and state law, to protect and enhance the water quality of our watercourses, water bodies and wetlands in a manner consistent with the federal clean water act. The objectives of this Chapter are:

A. To regulate the introduction of pollutants to the MS4;

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F. To promote public awareness of the hazards involved in the improper discharge of pollutants into the MS4.

Section 3. Section 8-4-2 of the Erie Municipal Code is hereby repealed in its entirety and reenacted as follows:

8-4-2: DEFINITIONS:

For purposes of this Chapter, the following terms shall have the following meanings:

CDPHE: The Colorado Department of Public Health and Environment.

CDPS: The Colorado discharge permit system administered by CDPHE.

CONTROL MEASURES: Schedules of activities, prohibitions of practices, general good housekeeping pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce, to the maximum extent practicable, the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems, including treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

DIRECTOR: The Town's Public Works Director or designee.

DISTURBED AREA: That area of the land's surface disturbed by any work or activity upon the property by means including, but not limited to, grading; excavating; stockpiling soil, fill, or other materials; clearing; vegetation removal; removal or deposit of any rock, soil, or other materials; or other activities which expose soil. Disturbed area does not include the tillage of land that is zoned for agricultural use.

FACILITY: Any building, including without limitation a private home, structure, installation, process, or activity, from which there is or may be a discharge of a pollutant.

HAZARDOUS MATERIAL: Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or to the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

ILLICIT CONNECTION: Any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the MS4, including without limitation: conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the MS4; and any connections to the MS4 from indoor drains, sump pumps and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved.

ILLICIT DISCHARGE: Any direct or indirect release of a pollutant to the MS4.

INDUSTRIAL ACTIVITY: Activities subject to CDPS industrial permits, as defined in 40 C.F.R. § 122.26(b)(14).

MOBILE WASHING OPERATION: A commercial activity involving power washing, steam cleaning, and any other method of mobile cosmetic cleaning of, by way of example, the following: vehicles, fabric, pets and/or exterior surfaces.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4): Publicly owned facilities by which stormwater is collected and conveyed, including, but not limited to, any roads with drainage systems, municipal streets, gutters, curbs, catch basins, inlets, piped storm drains, pumping facilities, retention and detention basins, and natural and human-made or altered drainage ditches, channels, lakes or reservoirs, and other drainage structures.

NPDES PERMIT: A permit issued pursuant to Section 402 of the Clean Water Act, including permits issued by the state of Colorado in compliance with the act.

NONSTORMWATER DISCHARGE: Any discharge to the storm drain system that is not composed entirely of stormwater.

NONTREATMENT CONTROL MEASURES: Practices that include: schedules of activities, site planning incorporating low impact development techniques, general good housekeeping pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce, to the maximum extent practicable, the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems.

OPERATOR: The individual who has day-to-day supervision and control of activities occurring at a construction site.

OWNER: The person who owns a facility, development, part of a facility, or land.

POLLUTANT: Any sewage, sewage biosolids, garbage, chemical waste, biological material, solid waste, incinerator residue, ash, munitions, radioactive material, heat, rock, sand, cellar dirt and industrial and agricultural wastes discharged into the water.

POLLUTION: The presence in waters of the state of any substances, contaminants, or manmade or man induced impairment of waters or alteration of the chemical, physical, biological, or radiological integrity of water in quantities or at levels which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property or which unreasonably interfere with the enjoyment of life or property, including outdoor recreation unless authorized by applicable law.

PREMISES: Any building, lot, parcel of land, or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips.

RECEIVING WATER: Any water of the State that receives a stormwater discharge from MS4, including all watercourses, even if they are usually dry, and irrigation ditches that receive municipal stormwater, and storm sewer systems owned by other entities.

SPILL: Any intentional or unintentional release of solid or liquid material which may cause pollution of the MS4 or waters of the state.

STORMWATER: Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

STORMWATER MANAGEMENT PLAN (SWMP): A plan describing the control measures and activities to be implemented to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, MS4, or receiving waters to the maximum extent practicable.

THREATENED DISCHARGE: A condition creating a substantial probability of harm, which make it reasonably necessary to take immediate action to prevent, reduce or mitigate damages to persons, property or natural resources.

TREATMENT CONTROL MEASURE: A permanent system designed for the treatment of stormwater to prevent or reduce, to the maximum extent practicable, the discharge of pollutants.

WASTEWATER: Any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

WATERCOURSE: A channel, natural depression, slough, artificial channel, gulch, arroyo, stream, creek, pond, reservoir or lake, including major drainageways, in which stormwater runoff and floodwater flow, either regularly or infrequently.

WATERS OF THE STATE: Any and all surface and subsurface waters that are contained in or flow in or through the State, including watercourses that are usually dry, except for waters in sewage systems, waters in treatment works of disposal systems, waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed.

Section 4. Section 8-4-3 of the Erie Municipal Code is hereby repealed in its entirety and reenacted as follows:

8-4-3: APPLICABILITY:

This Chapter shall apply to all water entering the MS4 unless expressly exempted by this Chapter.

Section 5. Subsections A.6. and B.4. of Section 8-4-5 of the Erie Municipal Code are hereby repealed in their entirety and reenacted as follows:

8-4-5: ILLICIT DISCHARGE PROHIBITED; EXEMPTIONS:

A. Illicit Discharges Enumerated: No person shall discharge or cause to be discharged into the MS4 any illicit discharge, including without limitation the following:

* * *

6. Construction activities, wastes and residues (including without limitation painting, paving, concrete placement, saw cutting, material storage and earthwork) that leave the construction area without a stormwater quality permit. For construction activities, wastes, and residues that are subject to a stormwater quality permit, a discharge into the MS4 is not an illicit discharge until any performance securities have been released and the subject activities, wastes, and residues leave the construction area;

* * *

B. Exemptions: The following discharges, when properly managed, are exempt from the discharge prohibitions established by this Chapter:

* * *

4. Runoff of roadway and sidewalk anti-icing and deicing agent; provided that they are applied according to appropriate control measures.

Section 6. Section 8-4-8 of the Erie Municipal Code is hereby repealed in its entirety and reenacted as follows:

8-4-8: CONTROL MEASURES:

The owner or operator of a commercial or industrial establishment or a disturbed area shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 or watercourses through the use of treatment and nontreatment control measures. Further, any person responsible for premises, which are, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional treatment and nontreatment control measures to prevent the further discharge of pollutants to the MS4.

Section 7. Subsections B.2., C, E and F of Section 8-4-11 of the Erie Municipal Code are hereby amended as follows:

8-4-11: APPLICABILITY OF PERMIT:

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B. Exemptions: The following activities are exempt from this Chapter:

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2. Any activities specifically exempted in the Town's MS4 permit that the Director determines are applicable to the stormwater quality permit.

C. Permit Application: Applications for stormwater quality permits shall be filed on a form provided by the Town.

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E. Permit Issuance/Denial: Within thirty (30) days of receipt of a complete permit application, the Town shall either issue or deny a permit. If a permit is denied, the applicant shall be notified, in writing, of the grounds for denial and of the corrective actions that must be taken to obtain a permit. An applicant may appeal the denial in writing to the Director no later than thirty (30) days from the date of issuance of denial. The appeal must set forth the grounds for the appeal and include any documents in support of the appeal. The Town Administrator shall, within thirty (30) days of receipt of an appeal, rule on the appeal based upon review of the application, denial, appeal, and all documents related thereto. The parties shall receive written notice of the Town Administrator's decision.

F. Permit Fees: Fees shall be established by resolution of the Board of Trustees.

Section 8. Section 8-4-12 of the Erie Municipal Code is hereby repealed in its entirety and reenacted as follows:

8-4-12: CONSTRUCTION STORMWATER MANAGEMENT PLAN:

A. Preparation: The SWMP shall be prepared in accordance with the engineering, hydrologic and pollution control practices outlined in the Town's Standards and Specifications for Design and Construction of Public Improvements. Control measures shall be selected, designed, installed, implemented, and maintained to provide control of all potential pollutants, such as but not limited to sediment, construction site waste, trash, discarded building materials, concrete truck washout, chemicals, sanitary waste, and contaminated soils, in discharges to the MS4. At a minimum, pollutant sources with the following activities (if part of the applicable construction activity) shall be addressed:

1. Land disturbance and storage of soils;
2. Vehicle tracking;
3. Loading and unloading operations;
4. Outdoor storage of construction site materials, building materials, fertilizers, and chemicals;
5. Bulk storage of materials;
6. Vehicle and equipment maintenance and fueling;

7. Significant dust or particulate generating processes;
8. Routine maintenance activities involving fertilizers, pesticides, detergents, fuels, solvents or oils;
9. Concrete truck or equipment washing, including the concrete truck chute and associated fixtures and equipment;
10. Dedicated asphalt and concrete batch plants;
11. Other areas or operations where spills can occur; and
12. Other non-stormwater discharges including construction dewatering not covered under the Construction Dewatering Discharges general permit and wash water that may contribute pollutants to the MS4

B. Required Onsite: Each owner shall have the approved and updated SWMP onsite at all times, though an electronic copy shall suffice.

C. Inspection: All control measures shall be inspected at least every seven (7) days, or every fourteen (14) days and within twenty four (24) hours after any precipitation or snowmelt event that causes surface runoff. Inspections shall be conducted by an individual who has successfully completed formal training in erosion and sediment control by a recognized organization acceptable to the Director. A certification of successful completion of such training shall be provided upon request.

D. Maintenance: Control measures shall be continuously maintained in operating condition and repaired immediately when damaged.

E. Minor Modification: A minor modification to the SWMP are required if at any time the specified control measures do not meet the objectives of this Chapter or equivalent or better control measures are implemented. All minor modifications shall be implemented immediately and recorded on the owner's copy of the SWMP. The modified SWMP shall be made available to the Town during inspections.

F. Major Modification: When there is a significant change in design, construction, operation, or maintenance which has a significant effect on the hydrology or potential for discharge of pollutants to the MS4 or receiving waters, a revised SWMP shall be submitted to the Town for review and approval.

Section 9. Section 8-4-13 of the Erie Municipal Code is hereby repealed in its entirety and reenacted as follows:

8-4-13: TECHNICAL STANDARDS AND SPECIFICATIONS:

All control measures required by this Chapter shall comply with the following:

1. "Urban Drainage And Flood Control District's Urban Storm Drainage Criteria Manual", Volume 3, Stormwater Quality or its successor.

2. Any other alternative methodology which is demonstrated to be effective and approved by the Town.

Section 10. Section 8-4-14 of the Erie Municipal Code is hereby repealed in its entirety and reenacted as follows:

8-4-14: PERMANENT CONTROL MEASURES:

A. Required: All development, unless exempted by the Town's MS4 permit, shall address stormwater runoff quality through the use of permanent control measures, which shall be maintained in perpetuity.

1. Treatment control measures, such as inlet inserts, bioretention, grass swales and buffers, extended detention basins, sand filters, permeable pavement, constructed wetland ponds and channels, and underground control measures shall be owned and operated by the owner of the property on which the control measure is located, unless the Town in writing agrees that a person other than the owner shall own or operate such control measure.

2. Nontreatment control measures, such as site operations, employee training and site planning incorporating low-impact development techniques to address stormwater quality shall be implemented in perpetuity.

3. As a condition of approval of the control measures, the owner of a private project shall also agree to maintain the control measures to their design capacity. The obligation to maintain the control measures shall be memorialized on the recorded subdivision plat, annexation plat, development agreement or other recorded instrument or in a form acceptable to the Town.

B. Certification: Upon completion of a project, but before construction acceptance or a certificate of occupancy is issued, the Town shall be provided a written certification stating that the completed project is in compliance with the approved final plan. After construction is completed, the owner shall submit as-built plans for any permanent treatment control measures certified by a Colorado licensed professional engineer. A final inspection by the Town is required before the release of any performance guarantees.

C. Ongoing Inspection and Maintenance:

1. Maintenance Agreements: The owner of a site with privately maintained control measures must execute an agreement addressing maintenance of control measures that shall be binding on all subsequent owners of the permanent control measures. The owner of any permanent control measures shall be responsible for operation and maintenance of such control measures regardless of whether such control measures are located on publicly-owned property.

2. Publicly-Owned Permanent Control Measures: Publicly owned or maintained permanent control measures shall be subject to ongoing inspection to ensure the control measures are functioning properly.

3. Long Term Inspection: Permanent control measures included in a final drainage plan shall undergo ongoing inspections to document maintenance and repair needs and to ensure compliance with the requirements of the agreement, the plan and this Chapter.

D. Existing Control Measures or Buffers: Upon review of a land development submittal, if the submittal demonstrates that existing permanent control measures are in place to address water quality treatment for the site, then no additional control measures will be required, and if the submittal shows existing vegetative buffers, or other existing site features that will provide adequate treatment for the proposed development, then no additional control measures will be required.

Section 11. Section 8-4-15.A. of the Erie Municipal Code is hereby repealed in its entirety and reenacted as follows:

8-4-15: FINANCIAL SECURITY:

A. As a condition for the issuance of a stormwater quality permit, applicants may be required to provide security in the form of an irrevocable letter of credit, or cash. The amount of the security will generally be based upon one hundred fifteen percent (115%) of the estimated cost of the work required to ensure compliance with the permit's terms and conditions and requirements of this chapter. After final stabilization acceptance, the Director shall determine the amount of security that the town will retain until the stormwater quality permit is closed, and shall release the amount of such security not so retained.

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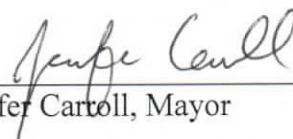
Section 12. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Board of Trustees hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one, or part, or parts be declared unconstitutional or invalid.

Section 13. Safety. The Board of Trustees finds that the adoption of this Ordinance is necessary for the protection of the public health, safety and welfare.

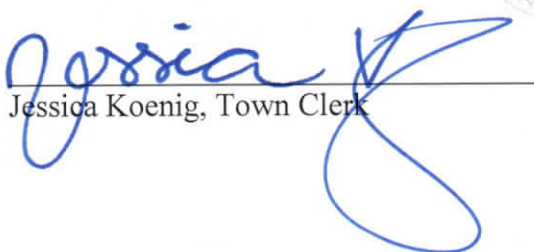
Section 14. Effective Date. This Ordinance shall take effect 30 days after publication following adoption.

INTRODUCED, READ, PASSED AND ORDERED PUBLISHED this 22nd day of October, 2019.




Jennifer Cartoll, Mayor

ATTEST:


Jessica Koenig, Town Clerk